

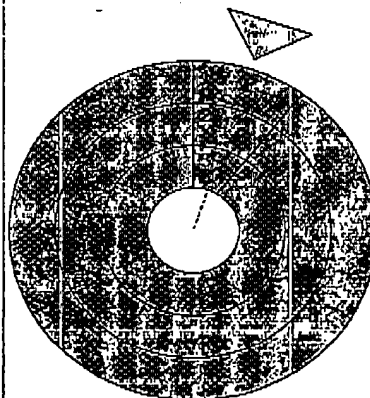
Remarks

Claims 1-43 are pending in the application. All claims stand rejected. By this paper, claims 1, 2, 13-15, 22, 23, 34-36, 40, and 41 have been amended. Claims 42 and 43 have been canceled. Reconsideration of all pending claims herein is respectfully requested.

Claims 1-43 were rejected under 35 U.S.C. 103(a) as being unpatentable over Easty et al. ("Easty") in view of Ohkura et al. ("Ohkura"). This rejection is respectfully traversed.

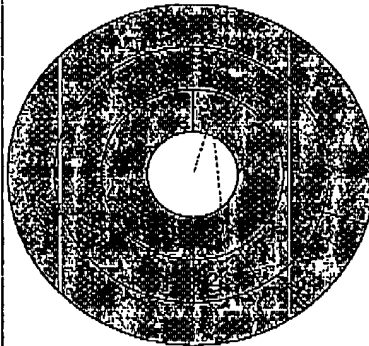
Cited References Do Not Disclose a Radially-Aligned Selection Path

Claims 1, 2, 22, 23, 40, 41 have been amended to include limitations similar to those of canceled claims 42 and 43, *i.e.*, "the user-selected options from the first and second sets **always define a radially-aligned selection path through the first and second curvilinear menus.**" An example of a radially-aligned selection path through a plurality of curvilinear menus is as follows:



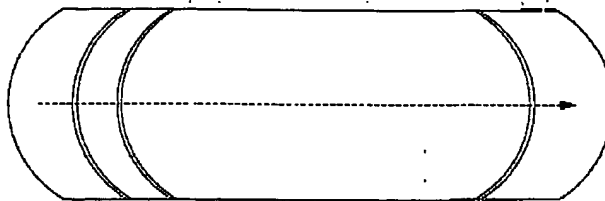
The selected options are "radially-aligned" because they are aligned along a radius (dashed line) defined by the concentric menus, which extends from the center of the menus towards the fixed selection indicator (triangle).

Easty does not disclose or suggest a radially-aligned selection path. In Easty, the selection indicator for each successive menu is not fixed, as required by claim 1. Instead, the user moves the selection indicator around each ring to select a desired option. This results in a selection path that is not always radially-aligned. Indeed, his selection path cannot always be radially aligned, or a majority of the options will not be selectable, destroying the intent of Easty. For example, a selection path in Easty may look like the following:



No one of ordinary skill in the art would refer to Easty's selection path as "radially-aligned." Accordingly, the Examiner agreed that "Easty fails to expressly teach/disclose ... a radially-extending selection path...." Office Action at page 15.

Contrary to the Examiner's assertions, however, Ohkura does not cure the deficiencies of Easty. Ohkura's menu consists of a plurality of cylinders stacked into a longer cylindrical interface, as shown below.

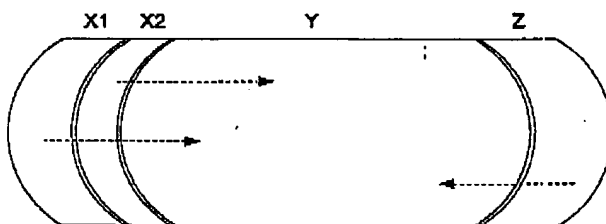


If the Examiner is suggesting that the successive rotation of rings from left to right (or right to left) constitutes a "selection path," as shown by the dashed line above, that path is not "radial" by any reasonable interpretation of the term. At best, the dashed line shown above may be referred to as "normal" or "perpendicular" to the circular planes defined by the cylinders. The line cannot properly be referred to as a "radius" of anything. A radius is defined as "a line segment that joins the center of a circle with any point on its circumference." *The American Heritage® Dictionary of the English Language, Fourth Edition*. Ohkura's selection path does not join the center of a circle and cannot, therefore, be deemed a radius.

Because both of the references are missing a claimed element, *i.e.*, "a radially-aligned selection path," the combination of the references is also missing this element. Furthermore, any modification of the references should be made in view of Easty's teaching away from a radially-aligned selection path, as shown in his FIG. 1c.

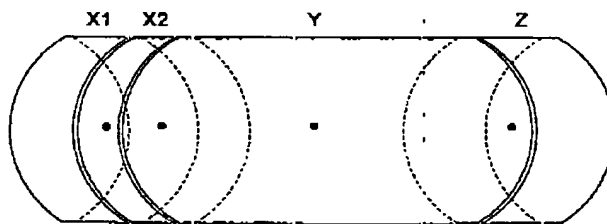
Ohkura even fails to show a linear selection path (*e.g.*, from left to right or right to left) through the menus. Ohkura's cylindrical interface, as shown in his FIG. 18, has four independently rotatable disks. However, each successive disk does not represent a sub-menu of a previous disk, analogous to the concentric rings of the claimed invention.

For example, as shown below, "Area Z" represents different genres of television programs. Rotating "Area Z" will change the programs shown in "Area Y" (to the left of "Area Z") according to the selected genre. However, rotating "Area X1" will not change "Area X2" (directly to the right of "Area X1"), but, instead, will also change "Area Y."



Thus, Ohkura's "selection path," unlike the claimed invention, does not show a progressive series of menus along a linear, let alone radial, direction.

Finally, Ohkura does not even teach concentric menus. According to the Office Action at page 3, "Ohkura expressly teaches one or more curvilinear menus that are *concentric* menus...." (emphasis added). However, to be concentric, the menus must "share a common center." See *The American Heritage® Dictionary of the English Language, Fourth Edition*. However, Ohkura's three-dimensional menus do not share a common center, as shown below, with each dot representing the center of a respective menu.



No one of ordinary skill in the art would refer to these stacked disks as "concentric." If the Examiner is arguing that all of the different centers are on the same axis, the applicant respectfully submits that Ohkura does not disclose or suggest viewing the menus along that axis. However, if the cylinder was viewed from the end, none of the menus would be visible because (1) the writing is on the circumference of the cylinder and (2) all of the individual cylinders are the same size. If the Examiner is proposing some radical alteration of Ohkura in which menu items would be visible when the cylinder is viewed end-on, the applicant respectfully submits that this is hindsight reconstruction based on the applicant's own teachings.

Easty Teaches Away from Rotation of the Inner Ring

With respect to the proposed combination, the Office Action does not take into account the fact that Easty actually teaches away from rotation of the inner ring. Easty clearly states that

[w]hen an icon 11a is selected from the outer menu ring 11, in addition to rotating the outer ring to the new setting, the inner ring 12 is re-displayed with appropriate icons identifying the available subcategories associated with the selected category. For example, if the "music" category is selected from the outer menu ring 11, the icons displayed on the inner menu ring 12 will include rock, classical, etc. (FIG. 1b). When the inner menu ring 12 is initially displayed in response to a selection of a content category, an arbitrary one among the icons 12a is highlighted, such as the one located at the top of the inner ring, or a randomly selected one. Highlighting is done by means of a highlighting icon 14, which is a border having a distinctive shape surrounding the highlighted icon (FIG. 1b). The user may then select an icon 12a from the second menu ring 12 representing a subcategory of digital contents. When a second icon 12a is selected, the inner menu ring 12 is re-displayed with the selected second icon highlighted, **while the positions of the second icons along the second circle remain unchanged (FIG. 1c).**

Column 5, lines 45-64 (emphasis added).

In light of this clear teaching, Easty and Ohkura should not be combined, at least in the way that that the Examiner suggests. In determining obviousness, "the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed." Hartness International, Inc. v. Simplicatic Engineering Co., 819 F.2d 1100, 2 U.S.P.Q.2d 1826 (Fed. Cir. 1987) (emphasis added). Part of this inquiry into the invention "as a whole" must take into account examples of "teaching away" from the claimed invention in the cited references. After reading Easty, one of ordinary skill in the art would be left with the impression of the desirability of not rotating the successive rings, but using, instead, a movable selection indicator. This teaching, combined with Ohkura's teaching of rotatable cylinders, does not result in the claimed invention. If anything, Ohkura should be modified to have a movable selection indicator, as in Easty, rather than the other way around.

Cited References Do Not Disclose Automatically Playing an Audio Sample in Response to an Option Being Aligned With Fixed Selection Indicator Without an Explicit Selection Action

As amended, claims 13 and 34 recite that the audio sample is **automatically** played in response to the corresponding option **being aligned** with the fixed selection indicator **without an explicit selection action other than rotating one of the curvilinear menus**. As the user rotates the menu, audio samples associated with each option are automatically played without the user having to actually select one of the options.

The Office Action states that "Easy fails to expressly teach/disclose [that] the audio sample is played in response to the corresponding option being aligned with the fixed selection indicator prior to an explicit selection action." However, contrary to the Examiner's assertions, the addition of Ohkura does not cure the deficiencies of Easy.

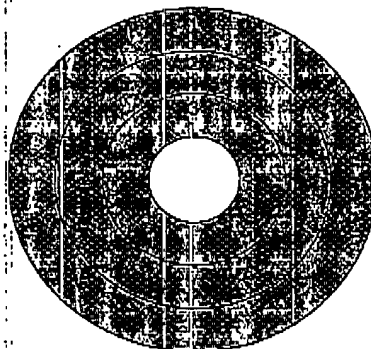
The Office action refers to Ohkura's use of "the preset button, which is not an explicit selection on the menu, but an ability to select promotion channels that are not being broadcast or for a preview of a program that is being displayed." Office Action at page 6. The applicant cannot find a reference to the word "preset" in Ohkura. However, if the Examiner is referring to the "program preview button switch 122," the applicant respectfully points out that actuation of this button is necessary to display the preview, which is an explicit "selection" of the preview. Ohkura does not disclose or suggest automatically displaying a preview with no action other than rotating one of the menus, as claimed.

Cited References Do Not Disclose a Second Curvilinear Menu That Concentrically Encircles the First Curvilinear Menu

The applicant respectfully submits that the Office Action appears to have missed the distinction between claims 14 and 15 (as well as between claims 35 and 36). For example, claim 14 recited that the second curvilinear menu is concentrically displayed **around** the first curvilinear menu, while claim 15 recited that the second curvilinear menu is concentrically displayed **within** the first curvilinear menu. With regard to both claims, the Examiner states that "Easy teaches the inner and outer concentric rings are displayed around one another." **This statement describes a**

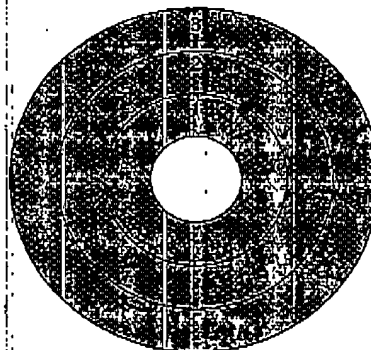
geometric impossibility. An "inner" ring cannot be displayed around an "outer" ring. Therefore, the rings are not displayed "around one another."

For example, in the following illustration, menu 1 is displayed first, followed by menu 2, which is displayed concentrically within menu 1, followed by menu 3, which is concentrically displayed concentrically within menu 2.



Thus, successive menus become progressively smaller.

By contrast, in the following example, menu 1 is displayed first, followed by menu 2, which is displayed concentrically around menu 1, followed by menu 3, which is displayed concentrically around menu 2.



Thus, successive menus become progressively larger.

These two cases are mutually exclusive and cannot be said to be shown in the same figure of Easty. Easty appears to have progressively smaller menus, as shown

in FIGs. 1a-c. All of Ohkura's menus are the same size. The applicant respectfully request that the Examiner point out a figure in the references in which subsequent sub-menus become progressively larger.

Although the applicant believes that his intent was clearly manifest in the previous claim language to one of ordinary skill in the art, the applicant has amended claims 14 and 35 to recite that the second curvilinear menu concentrically encircles the first curvilinear menu. Likewise, claims 15 and 36 have been amended to recite that second curvilinear menu is concentrically encircled by the first curvilinear menu.

Cited References Do Not Account for Each and Every Limitation

A rejection based on prior art – whether grounded in anticipation or obviousness – must account for each and every claim limitation. *Celeritas Techs. Inc. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360, 47 U.S.P.Q.2d 1516, 1522 (Fed. Cir. 1998) (anticipation); *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q.2d 494, 496 (CCPA 1970) (obviousness); MPEP § 2143.03 ("To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.") (emphasis added). However, at least the following limitations are not accounted for in the cited references:

- (1) rotating a *second* or subsequent *concentric* menu to align with a fixed selection indicator;
- (2) always defining a *radially-aligned* selection path through the menus;
- (3) *automatically* playing an audio sample in response to an option being merely *aligned*, without an explicit selection action other than *rotating the menu*; and

(4) *concentrically encircling* the first menu by the second menu;

Accordingly, the applicant respectfully submits that a prima facie case of obviousness cannot be established with the cited references and respectfully requests that the 35 U.S.C. 103(a) rejection be withdrawn.

Conclusion

In view of the foregoing, independent claims 1, 22, 40, and 41 are believed to be patentably distinct over the prior art of record. In addition, at least dependent claims 2, 13-15, 23, 34-36, 42, and 43 are believed to be patentably distinct for the reasons stated above. All other claims depend directly or indirectly from one of the foregoing claims and are likewise believed to be patentably distinct based on that dependency.

Accordingly, the applicant respectfully submits that all claims are in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

Digeo, Inc.

By


Kory D. Christensen
Registration No. 43,548

STOEL RIVES LLP
One Utah Center Suite 1100
201 S Main Street
Salt Lake City, UT 84111-4904
Telephone: (801) 328-3131
Facsimile: (801) 578-6999

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.